



Paper No. 11

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In re Application of
Roustaei, Lawrence, Lebaschi & Bian
Application No.: 09/579,023
Filed: May 25, 2000
Attorney Docket No.: 15031.340
For: OPTICAL SCANNER FOR READING AND
DECODING ONE-AND-TWO-DIMENSIONAL
SYMBOLOGIES AT VARIABLE DEPTHS OF
FIELD INCLUDING MEMORY EFFICIENT HIGH
SPEED IMAGE PROCESSING MEANS AND
HIGH ACCURACY IMAGE ANALYSIS MEANS

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the reconsideration petition under 37 CFR 1.47(a), filed June 28, 2002 (certificate of mailing date June 25, 2002).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on May 25, 2000 without an executed oath or declaration. Accordingly, on July 11, 2000, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing. Applicant's first petition under 37 CFR 1.147(a), filed July 24, 2000, was dismissed on February 26, 2002 for failure (1) to show that the non-signing inventors refused to join in the filing of the application or could not be reached after diligent efforts and (2) to submit an acceptable oath/declaration.

In response, on June 28, 2002 (certificate of mailing date June 25, 2002), a petition for a two month extension of time and required fee, a declaration executed by 1 of 5 joint inventors, another petition fee, and the instant petition were filed. A declaration of facts of Melissa Scanzillo accompanied the petition.

A grantable petition under 37 CFR 1.47(a) requires
(1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found, or reached after diligent effort,
(2) a proper oath or Declaration executed by the available joint inventor(s),

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- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

This petition lacks item (2) above.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. The citizenship of each inventor must be included on the oath or declaration. As listing the citizenship for each inventor is a statutory requirement under 35 USC 115, it cannot be waived. An oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by the Rule 1.47 applicant on behalf of the non-signing inventors is REQUIRED. See MPEP 409.03(a).

A review of Office financial records indicates that petitioner has paid the Rule 47 petition fee twice. Pursuant to petitioner's authorization, deposit account no. 50-0521 will be credited one of the \$130.00 fees.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
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Telephone inquiries should be directed to the undersigned at (703) 308-6712.



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